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Report to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate

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WATER RESOURCES

Compensation to Water Users Did Not Reflect the Value of Rights and Interests

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Resources, Community, and
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April 18, 1990

The Honorable Bill Bradley
Chairman, Subcommittee on Water
and Power
Committee on Energy and Natural Resources
United States Senate

Dear Mr. Chairman:

On September 6, 1989, we provided you with information in response to your July 10, 1989, letter and subsequent discussions with your office on the compensation provided to the Strawberry Water Users Association (SWUA) by the Bureau of Reclamation in 1986, and by the Congress under Public Law 100-563 in 1988. SWUA was under contract with the Department of the Interior's Bureau of Reclamation to operate the Strawberry Valley Project in Utah—part of the Bonneville Unit of the Central Utah Project. The irrigation project consists of 56,870 acres of land, including a reservoir that is being enlarged.

Although the United States owns the project land, SWUA had the right to revenues from activities on this land, such as grazing, recreation, and timber and mineral development. Because of the enlargement of the Strawberry Valley Project, the Bureau transferred management of part of the project's land to the U.S. Department of Agriculture's Forest Service in 1986, and compensated SWUA for its future revenue losses on this land. In addition, in response to the dissatisfaction of an ad hoc committee—composed of SWUA, the Bureau, the Forest Service, a state of Utah wildlife resource agency, and a special interest group called the Utah Wildlife Leadership Coalition—with the condition of the project land under SWUA's land management practices, Public Law 100-563, enacted on October 31, 1988, transferred the administrative jurisdiction of all but 95 acres of the project land from SWUA to the Forest Service and compensated SWUA for its lost contractual surface rights and interests.

You asked us to determine the legal character and economic value of SWUA's rights and interests, including all properties and improvements, to be acquired or transferred under section 4 of the act, as well as the land rehabilitation costs. As agreed, in order to meet your needs, the September 6 letter contained the information that we were able to gather through early September 1989. This report incorporates and updates the information in that letter. As you requested, we analyzed comments in the September 14, 1989, Congressional Record, printed at

the request of Senator Garn of Utah, that, according to SWUA officials, represent SWUA's position on our letter.

Results in Brief

When the Bureau compensated SWUA in 1986, it did not have a policy to guide the compensation of organizations managing its projects when the rights and interests of these organizations are terminated. Further, the Bureau did not obtain a formal opinion from the Department of the Interior's Solicitor's Office to establish the legal rights and interests of SWUA. In our opinion, when the United States removed SWUA's right to obtain revenues from the project land, SWUA's legal entitlement to compensation was limited to the revenues that would have been lost had existing contracts not been completed. Because all existing contracts were completed when SWUA's compensation was awarded, SWUA's rights and interests had no remaining value; therefore, there was no legal obligation to compensate SWUA prior to Public Law 100-563.

The compensation provided to SWUA by the Congress in 1988, which resulted from a policy decision, was not based on complete information because no formal opinion establishing the rights and interests of SWUA was available.

In essence, the combined $17.9 million paid to SWUA by the Bureau and the Congress, including the non-monetary benefits the act provided—title to potentially valuable land zoned for commercial development, future grazing privileges, retention of its contractual subsurface rights, and being held harmless for the cost of rehabilitating the deteriorated project land—did not reflect the value of SWUA's rights and interests. Further, included in the $17.9 million is a double payment of $2.9 million for projected future recreation and grazing revenue losses on part of the project land. In addition, the significant deterioration of the project land, which requires an estimated $3 million in rehabilitation, resulted from SWUA's past land management practices. Although SWUA's 1940 contract with the Department of the Interior established SWUA's financial liability for these land rehabilitation costs, the 1988 act removed SWUA's liability.

SWUA Had a Limited Legal Right to Compensation

SWUA was organized in 1922 to operate and maintain, under contract with the Bureau of Reclamation, most of the Strawberry Valley Project in Utah and to repay outstanding project construction costs. SWUA entered into a contract with the Department of the Interior in 1926—which was modified in 1928 and superceded by another contract in

1940—that provided SWUA the right to generate revenues from the project land.

Under SWUA's current 1940 contract with the Department of the Interior, the Bureau retained project oversight responsibility. The United States retained ownership of the project land, including the right to use this land for purposes that may preclude SWUA's engaging in income-producing activities. SWUA, therefore, had no guarantee that it could generate income in perpetuity from this land. Accordingly, when the United States removed from SWUA both its administrative jurisdiction over the project land and its right to obtain revenues from the surface uses of the land, no legal obligation existed to compensate SWUA in perpetuity for possible income from future contracts prior to Public Law 100-563.

In our opinion, SWUA was legally entitled to receive compensation when the United States removed SWUA's rights and interests to surface uses of the land. This compensation, however, should have been limited to actual revenues lost from existing contracts that had not been completed, and should not have been based on possible future income. Because all existing annual contracts had been completed before the compensation was awarded, SWUA's rights and interests had no remaining value.

When the Bureau compensated SWUA in 1986, the Bureau had no policy to guide the compensation of organizations managing its projects when the rights and interests of these organizations are terminated. Further, the Department of the Interior's Solicitor's Office did not issue a formal opinion establishing SWUA's legal rights and interests, in order to have a basis for compensating SWUA in 1986. This formal opinion also could have served as the criterion for the Congress when it deliberated SWUA's compensation in 1988. The compensation authorized in 1988 represented a policy decision on the part of the Congress.

The September 14, 1989, Congressional Record comments on SWUA's legal rights stated that SWUA was entitled in perpetuity to the use, possession, management, and control of the project and was therefore entitled to compensation on the basis of its ownership interest in the project land. We believe, however, that although SWUA had a restricted right to generate revenues from the project land owned by the United States, no legal obligation existed to compensate SWUA in perpetuity for possible income from future contracts prior to Public Law 100-563.

Appendix I provides a detailed discussion of our analysis of the legal character of SWUA's rights and interests, and our response to the relevant comments appearing in the Congressional Record on the legal issues.

Compensation Provided Was Not Based on SWUA's Rights and Interests

In 1986, the Bureau paid SWUA $2,883,800—$1,895,900 for relocating grazing and $987,900 for loss of recreation revenues on 25,990 acres of project land. These amounts represented potential revenues that SWUA could have received from the uses of the project land if it held the land in perpetuity, rather than the actual value of SWUA's rights and interests.

The Congress' decision to compensate SWUA in 1988 resulted from recommendations made by an ad hoc committee formed because of growing concerns over the poor condition of the project land managed by SWUA. The committee concluded in 1987 that SWUA's remaining contractual surface rights on all project land should be bought out, and on October 31, 1988, the Congress generally incorporated, in Public Law 100-563, the ad hoc committee's agreement. Specifically, the compensation to SWUA under section 4 of the 1988 act included

- ownership of 95 acres of project land, together with improvements, in a northwest section of the project land;
- SWUA's first right of refusal for grazing privileges on certain project land;[1]
- retention of SWUA's contractual rights to issue oil, gas, coal, and mineral leases, excluding sand and gravel, on project land;
- assumption by the Forest Service of the responsibility for project land rehabilitation, with SWUA specifically held harmless for any rehabilitation costs; and
- authorization for the appropriation of $15 million to SWUA for relinquishing its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of project land. Public Law 101-101, enacted September 29, 1989, appropriated the $15 million.

According to SWUA officials, the $15-million valuation for SWUA's rights and interests was based on the fair market value of the project land as if SWUA owned the land, as determined by an independent appraisal.

[1] According to the Forest Service's Life and Watershed Management Branch Chief, SWUA will be the first entity offered grazing privileges on Strawberry Valley Project land if the Forest Service permits grazing to resume.

Because the project land is owned by the United States rather than SWUA, however, this type of appraisal should not have been used as a basis to determine the compensation because it does not represent the value of SWUA's contractual surface rights and interests. Rather, SWUA's compensation should have been based on lost revenues from existing annual contracts.

SWUA Compensated Twice on Part of the Project Land

The $15 million appraised value for SWUA's rights and interests included the $2.9-million compensation awarded in 1986 for part of the project land, and $11.5 million for SWUA's remaining surface rights and interests.[2] Therefore, when SWUA was awarded the $15 million, it received compensation a second time for its rights and interests on the 25,990 acres.

Public Law 100-563 Removed SWUA's Liability for Land Rehabilitation Costs

SWUA's 1940 contract with the Department of the Interior held SWUA responsible for managing the project land in accordance with the Bureau's rules and regulations and specifically held the United States harmless for any land rehabilitation costs that might result from SWUA's management practices. Although SWUA's management practices generally deteriorated the land, Public Law 100-563 removed SWUA's liability, and authorized $3 million for the Forest Service to rehabilitate the land.

The Congressional Record comments stated that the compensation provided to SWUA did not represent the full amount due to SWUA because the $15 million was not exempt from federal and state taxes. We believe that SWUA's rights and interests had no remaining value.

Appendix II provides a detailed discussion of our analysis of the compensation provided to SWUA, and our response to the September 14, 1989, comments in the Congressional Record regarding this issue.

[2]The $15 million was calculated by adding $2.9 million (the 1986 compensation) plus $11.5 million (the appraised value of SWUA's remaining surface rights and interests in the project land). According to SWUA's attorney, the $14.4 million total was then rounded up to the nearest whole million.

SWUA's Land Management Practices Deteriorated the Project Land

According to the chiefs of the Bureau's Land Management Recreation Branch and the Forest Service's Life and Watershed Management Branch, the Strawberry Valley Project land needs extensive rehabilitation. The deterioration of the project land resulted from SWUA's past land management practices, which, according to the Bureau's Utah Projects Manager, included overgrazing and herbicide treatments to enhance grazing. Further, he said that this was done at the expense of the fishery resources and riparian habitat—the thin strips of vegetation bordering the reservoir and streams—that are important habitat for wildlife.

To repair the deteriorated condition of the project land, the Forest Service prepared a preliminary 5-year, $2.8-million estimate that was used to support the $3-million land rehabilitation cost in Public Law 100-563. The preliminary plan addressed stream channel and riparian rehabilitation, and provided a range development plan. As of February 1990, $600,000 has been appropriated to rehabilitate the land.

The Bureau requires land use inspections of Bureau projects every 5 years to ensure that the projects are managed in accordance with its rules and regulations. However, the Bureau's Salt Lake City Regional Supervisor of Water and Land and the Lands Management and Recreation Branch chief told us that the Bureau is not a land management agency and that because the Bureau adopted a "hands-off" policy regarding SWUA's land management practices, it did not conduct the required land use inspections.

According to an official in the Bureau's Washington, D.C., Resources Management Liaison Division, the Bureau, which is responsible for millions of acres of land west of the Mississippi River, issued a policy in 1989 to require the development of resource management plans for all Bureau projects. The Bureau is now completing guidelines for drafting these plans. To be developed by both the Bureau and the organizations managing the Bureau projects, the plans will provide guidance on how project purposes such as grazing and recreation should be managed in accordance with Bureau rules and regulations.

The Bureau allocated about $500,000 in fiscal year 1989 and has set aside about $3 million in fiscal year 1990 for plan development; no resource management plans were completed as of February 1990.

SWUA's land management practices and their impact on the project land are further discussed in appendix III.

Conclusions

Because SWUA's rights and interests had no remaining value when the compensation was awarded by the Bureau and the Congress, there was no legal obligation to compensate SWUA prior to Public Law 100-563. The decision by the Congress to provide compensation to SWUA for its rights and interests was based on incomplete information because the Department of the Interior's Solicitor's Office had not issued a formal opinion establishing SWUA's rights and interests. Establishing a Bureau policy to guide the compensation of organizations managing Bureau projects, on the basis of their contractual rights and interests, would provide criteria for any future federal buy-outs.

The Bureau's hands-off policy regarding SWUA's management practices permitted the condition of the Strawberry Valley Project land to deteriorate. The millions of acres for which the Bureau is responsible make it essential that the Bureau have well-developed plans to manage its projects, and to ensure that these projects are managed in accordance with its rules and regulations. The Bureau's recent policy requiring the development of resource management plans for all Bureau projects is a step in the right direction.

Recommendations

In the future, the federal government may want to buy out the rights and interests of organizations managing Bureau projects. To assist the Congress when it deliberates on the just compensation for the termination of contractual rights of organizations managing Bureau projects, we recommend that the Secretary of the Interior direct the Commissioner of the Bureau of Reclamation to provide the Congress with specific information on (1) the legal rights and interests of the organization and (2) the remaining economic value of these rights and interests for which the organization should be compensated.

To ensure that future just compensation is awarded by the Bureau of Reclamation for the termination of contractual rights of organizations managing Bureau projects, we recommend that the Secretary of the Interior direct the Commissioner of the Bureau of Reclamation to develop a policy to guide the compensation of organizations. Such a policy should be based on the Department of the Interior's contractual obligations with these organizations, which would limit the compensation awarded to the losses incurred when these rights and interests are terminated.

We reviewed the legislative history of the Strawberry Valley Project, and met with Department of the Interior attorneys in Salt Lake City,

Utah, and Washington, D.C. In addition, we reviewed records, documentation, and reports at the Bureau's Salt Lake City Regional and Provo, Utah Projects offices, and met with officials from the Bureau, the Forest Service's Uintah National Forest, and the Strawberry Water Users Association. (See app. IV.)

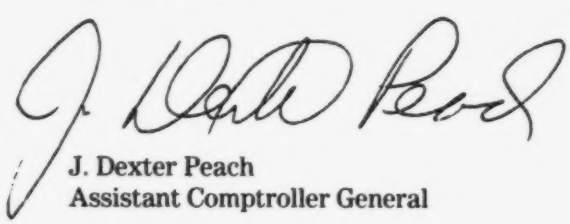
Agency Comments

As requested, we did not obtain official agency comments on a draft of this report. However, we discussed the factual information in the report with Bureau officials at the Salt Lake City Regional and Utah Projects offices, who told us that the information was accurate. We also met with SWUA representatives to discuss the September 6, 1989, correspondence and the comments entered in the September 14, 1989, Congressional Record, which SWUA told us represented its views. SWUA did not agree with our positions on various matters, believing that it was entitled to compensation on the basis of the ownership interest in the land, and that the compensation awarded did not represent the full value of its rights and interests. Our analyses of SWUA's views are included in appendixes I and II.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of the Interior, the Secretary of Agriculture, the Commissioner of the Bureau of Reclamation, and other interested parties.

This work was conducted under the direction of James Duffus III, Director, Natural Resources Management Issues, who may be reached at (202) 275-7756. Other major contributors are listed in appendix V.

Sincerely yours,



J. Dexter Peach
Assistant Comptroller General

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Abbreviation

SWUA Strawberry Water Users Association

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The Legal Character and Economic Value of SWUA's Rights and Interests

The Strawberry Water Users Association (SWUA) was organized to, among other purposes, operate and maintain the Strawberry Valley Project. In accordance with legislation and its 1940 contract with the Department of the Interior, SWUA was authorized to obtain revenues from the use of project land. As a result of the enlargement of the Strawberry Reservoir and dissatisfaction with the condition of project land under SWUA's management, the Congress transferred the administrative jurisdiction of the project land from SWUA to the U.S. Forest Service. When SWUA's rights and interests to surface uses of the land were removed, SWUA was entitled to compensation for the loss of revenues from existing contracts that had not been completed but not for compensation based on possible future income.

Background of the Strawberry Valley Project

The Strawberry Valley Project was one of the earliest Bureau projects. Authorized by the Secretary of the Interior on December 15, 1905, under the provisions of section 6 of the Reclamation Act of 1902, the Bureau began construction of the Strawberry Valley Project in 1906 to provide irrigation water. The Strawberry Reservoir was substantially completed by 1915, and the first water was delivered in 1916.

On April 4, 1910, Public Law 114 authorized that approximately 56,870 acres be acquired from the Uintah Indians for the Strawberry Valley Project. The act further provided that the purchase price for this land be included in project construction costs that would be paid by the owners of the irrigated land. The 56,870 acres of project land could also be used to generate revenues in the form of rental payments that would be credited on the irrigators' behalf to the construction costs. Ownership, management, and control of this land was to transfer to the irrigators when they paid 51 percent of the project's construction costs.

The Fact Finder's Act of 1924 transferred the operation and maintenance of a water project to a water users association when two-thirds of the irrigated area was covered by water rights contracts with the Department of the Interior. Net profits derived from the leasing of project land for grazing and farming, operating power plants, and other activities were to be applied first to project construction costs, then to operation and maintenance, and finally as the water users directed.

SWUA Formed to Manage the Strawberry Valley Project

SWUA was organized in 1922 as a Utah nonprofit corporation to, among other purposes, contract with the Bureau to operate and maintain the project and repay outstanding construction costs. Pursuant to the Fact Finder's Act, SWUA entered into a contract with the Bureau in 1926, with contract modifications in 1928, to manage and operate most of the Strawberry Project. The Bureau, however, retained project oversight responsibility. The 1928 contract specifically provided that ownership of the project land would not pass to SWUA. In 1940, SWUA entered into its current contract, which also specified that ownership of project land would remain with the United States. Although SWUA completed repayment of the project construction costs in 1974, including the cost of the 56,870 acres of project land, the Congress did not transfer ownership of the land to SWUA.

SWUA has obtained revenues principally through fees received under annual agreements with its members who graze their cattle and sheep on allocated acreage, from recreational use, and under timber and oil and gas development leases. SWUA members have constructed camping sites, small cabins, and other recreational facilities on land adjacent to the reservoir.

Administrative Jurisdiction Over the Project Land Transferred to the U.S. Forest Service

The Colorado River Storage Project Act of 1956 authorized the construction of the Central Utah Project—composed of six units—the largest being the Bonneville Unit. The Bonneville Unit's construction will enlarge the Strawberry Reservoir from 8,400 to 17,120 surface acres and should be completely filled sometime in the 1990s. As part of this enlargement, the Bureau transferred the management of 25,990 acres from SWUA to the U.S. Department of Agriculture's Forest Service under an Interim Management Agreement dated February 2, 1982.

The transferred managerial responsibilities included management of both the recreation on the reservoir and the reservoir's surrounding land. In June 1984, the Forest Service assumed management of the 25,990 acres. The Bureau also built for SWUA new grazing and recreational facilities on higher land adjacent to the enlarged reservoir. SWUA believed it should be compensated for lost revenues from this acreage, and in 1986 the Bureau paid SWUA $2.9 million for revenue losses from recreation and grazing.

As early as the mid-1960s, recreation and fish and wildlife interest groups alleged that SWUA was poorly managing the project land. To

address growing concerns over the condition of this land, an ad hoc committee was formed in May 1987. The committee consisted of SWUA, the Bureau, the Forest Service, a state of Utah wildlife resource agency, and a special interest group called the Utah Wildlife Leadership Coalition. After a year of deliberating ownership and management issues on the future of the project land, the committee concluded that it would be in the best interest of all to buy out SWUA's contractual surface rights, excluding 95 acres to which SWUA would acquire title.[1] On October 16, 1989, the Forest Service assumed administrative jurisdiction—operation and maintenance control—of all the Strawberry Valley Project land. Public Law 100-563, dated October 31, 1988, generally incorporated the ad hoc committee's agreements.

Basis for SWUA Rights

On the basis of documents we reviewed and our discussions with Department of the Interior attorneys, we concluded that the United States, not SWUA, owned the project land. In the case of Strawberry Water Users Association v. United States, 611 F. 2d 838 (1979), the Court of Claims held that as a result of its 1928 and 1940 contracts with the Department of the Interior, SWUA conveyed or relinquished to the United States any legal or equitable property interest in project land. Consequently, SWUA was not entitled to compensation under the Fifth Amendment of the United States Constitution for the value of project land taken for the construction of the Central Utah Project's Bonneville Unit.

Under the 1940 contract—which implements the 1910 and 1924 acts—SWUA may obtain revenue from the use of project land through leasing and other activities approved by the Department of the Interior. SWUA has received revenues paid under annual contracts for livestock grazing and recreation, and for timber and oil and gas development activities under lease. The United States retained the right, however, to use this land for purposes that may preclude SWUA from income-producing activities. Therefore, because SWUA had no guarantee that it could generate income from the project in perpetuity, it was not entitled to compensation for the possible loss of such revenues.

When it compensated SWUA in 1986, the Bureau had no policy to guide the compensation of organizations when the rights and interests of such

[1]The original 56,870 acres of Strawberry Valley Project lands acquired from the Uintah Indians included the 95 acres to which SWUA acquired title in 1989, plus the 56,775 acres that the Forest Service will manage. These 56,775 acres are composed of the 25,990 acres of recreation lands and the remaining 30,785 acres.

organizations managing its projects are terminated. Further, the Bureau did not obtain a formal opinion from the Department of the Interior's Solicitor's Office to establish the legal rights and interests of SWUA as the basis for the 1986 compensation. When the United States removed SWUA's right to generate revenues from the land, the value of SWUA's rights both in 1986 and in 1988 should have been limited to the actual revenues that SWUA lost because existing contracts were not completed. The 1986 compensation should not have been based on possible future income, and the 1988 and 1989 monetary compensation should not have been based on the value of the project land, which SWUA did not own. Because all existing annual contracts were completed when SWUA's compensation was awarded, SWUA's rights and interests had no remaining value. Therefore, the compensation provided to SWUA by the Bureau in 1986 and the Congress in 1988 did not represent the value of SWUA's rights and interests. The compensation provided by the Congress in 1988 and 1989 resulted from a policy decision.

Analysis of the Principal Comments in the Congressional Record

Comments that represent SWUA's position regarding our September 6, 1989, letter, were printed in the Congressional Record of September 14, 1989, at the request of Senator Garn of Utah, to rebut our position regarding the legal basis for compensation to SWUA. The principal comments state that SWUA was entitled in perpetuity to the use, possession, management and control of the project land, and that it therefore was entitled compensation, on the basis of the ownership interest in the land, for relinquishing its surface rights and interests in the land. The United States, however, owns the project land, including both the legal title as well as the beneficial interest in the surface and the subsurface of this land. According to its 1940 contract with the United States, SWUA may use the land, provided that the government grants advance approval of SWUA contracts for use of the land. SWUA may retain the proceeds of income-producing activities. However, because the government, as owner, retains the right to use the land for purposes that may preclude income-producing activities, there is no guarantee that income would be produced. Accordingly, no legal obligation existed to compensate SWUA in perpetuity for possible income from future contracts prior to Public Law 100-563.

Our views are consistent with those expressed by the Department of the Interior's Associate Solicitor, Division of Energy and Resources, in a 1974 letter to the Department of Justice dealing with SWUA's legal rights. The Associate Solicitor stated, "Nor would there be a right on the part of the Association to be compensated for potential revenues from lands not

covered by approved contracts as of the time the United States superceded the Association's management and control."

The Congressional Record comments also cited section 14(f) of the 1940 contract, the Department of the Interior's August 8, 1972, Solicitor's Opinion, and the 1986 Compensation Agreement to rebut our statement that the value of SWUA's rights should be limited to lost revenues from existing contracts. Although section 14(f) provides that SWUA may obtain contracts to generate revenues from the project, it is our view that this provision does not guarantee that the project land would always be available for such purposes. Further, the 1972 Solicitor's Opinion, while holding that SWUA could continue to receive income from the project even though it had completed project repayment, did not recognize SWUA's right to payment for possible future income not associated with existing contracts. Moreover, in a 1974 letter to the Department of Justice, the Department of the Interior Solicitor's Office, in commenting upon the 1972 opinion, pointed out that there was no right to compensation for potential revenues not covered by existing contracts. Finally, although the 1986 compensation included payment for the loss of future revenues from grazing and recreation, we do not agree that this was legally required prior to Public Law 100-563.

Compensation Provided to SWUA in 1986 and Under Public Laws 100-563 and 101-101

SWUA received compensation when the United States removed SWUA's administrative jurisdiction over the Strawberry Valley Project land, thereby removing SWUA's ability to generate revenues from this land. In 1986, SWUA received $2.9 million from the Bureau as compensation for lost revenues on 25,990 acres of the project land. In 1988, the Congress enacted Public Law 100-563, which authorized that $15 million be appropriated to SWUA, in addition to significant non-monetary compensation, for the loss of its surface rights and interests in all of the project land. The $15 million was appropriated by Public Law 101-101 on September 29, 1989. Because all existing annual contracts had been completed when the compensation was awarded, SWUA's rights and interests had no remaining value. The compensation awarded, therefore, did not reflect the value of SWUA's rights and interests.

Compensation in 1986 Was Based on Potential Future Revenues

In 1986, the Bureau paid SWUA $2,883,800—$1,895,900 for relocating grazing and $987,900 for recreation revenue losses on 25,990 acres of project land. These amounts represented potential revenues that SWUA might have received from the land if it had held the land in perpetuity, rather than the actual value of SWUA's rights and interests in the land.

In setting the compensation, according to our analysis of Bureau records, the Bureau selected factors that resulted in a more favorable compensation package for SWUA. For example, the Bureau used SWUA's $54 relocation cost per animal unit for the 4.5-month grazing season as the basis for compensation.[1] The Bureau had also considered (1) $40, which SWUA described as the grazing fair market value, and (2) $17 to $20, which SWUA was charging its members for the 1981 grazing season.[2] The Bureau's Utah Projects Manager told us that the $54 figure used to calculate the 1986 compensation was negotiated with SWUA, and that it represented SWUA's actual cost for leasing private land during the 1982 grazing season. SWUA leased the land to relocate animals to other grazing areas during a Bureau construction project.

The Bureau averaged the historical recreation revenues from the years 1977 through 1981 to calculate the compensation for recreation revenue

[1] An animal unit is generally defined as a 1,000-pound cow, a horse, or five sheep.

[2] According to SWUA's president and the vice-president of the SWUA Grazing Committee, the Forest Service rate of $6.98 for the 1986 grazing season was considered but rejected because it did not include all the additional grazing services SWUA provided, such as feed, water, salt, medicine, herders, and fence maintenance.

losses. The Bureau capitalized the grazing and average recreation revenues at an internal rate of return computed by SWUA's accounting firm to arrive at the $2.9-million compensation.

Compensation in Public Laws 100-563 and 101-101 Not Based on Value of SWUA's Rights and Interests

The compensation in Public Law 100-563, enacted October 31, 1988, represented a policy decision on the part of the Congress, and generally incorporated the agreements reached by the ad hoc committee that reviewed SWUA's management of the project land. Section 4 of the act authorized the transfer of administrative jurisdiction of 56,775 acres of project land to the Forest Service within 15 days of payment of compensation to SWUA for its contractual surface rights and interests on this land, including sand and gravel. The compensation under section 4 included

- ownership of 95 acres, together with improvements, in a northwest section of the project land (the Bureau deeded this land to SWUA on May 4, 1989);
- SWUA's right of first refusal for grazing privileges on 30,785 acres of project land, and if permitted under a grazing rehabilitation plan, on the remaining 25,990 acres;
- retention of SWUA's contractual rights to issue oil, gas, coal, and mineral leases, excluding sand and gravel, on project land;
- assumption by the Forest Service of responsibility for project land rehabilitation. (The act authorized a total appropriation of $3 million, and held SWUA harmless for any costs associated with this rehabilitation.); and
- authorization for the appropriation of $15 million to SWUA for relinquishing its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of project land. The $15 million was appropriated in 1989.

SWUA's surface rights and interests were assessed by an independent appraisal as if SWUA owned the project land. Because the United States, not SWUA, owns the land, we believe that this type of appraisal should not have been used as a basis to determine the compensation because it does not represent the value of SWUA's surface rights and interests.

In August 1989, SWUA's attorney advised us that the $15 million was derived from a negotiated settlement, and that the funds were needed to retire the outstanding debt of $9.5 million on Bureau bonds used by

SWUA to rehabilitate project facilities.[3] The remaining $5.85 million from the $15 million appropriation would be used to pay the federal and state taxes on the compensation.

SWUA Compensated Twice on Part of the Project Land

The appraisal, which valued SWUA's rights and interests at $15 million, included $2.9 million for the compensation SWUA received in 1986 for its rights and interests on 25,990 acres of the project land, and valued SWUA's remaining rights and interests at $11.5 million.[4] Because Public Law 101-101 appropriated $15 million, rather than $11.5 million—the balance of SWUA's remaining rights and interests—the appropriation had the effect of paying SWUA twice for its right to generate revenues from grazing and recreation on the 25,990 acres.

According to the September 14, 1989, comments in the Congressional Record, the compensation provided to SWUA did not represent the full amount due to SWUA, and did not have the effect of paying SWUA twice for its right to generate revenues on the 25,990-acre parcel. Further, the comments reflected SWUA's belief that the $15 million compensation should have been exempt from federal and state taxes, and that because the compensation was not tax-exempt, SWUA did not receive all to which it was entitled. Because we believe that SWUA's rights and interests had no remaining value, the tax consideration is not relevant.

Public Law 100-563 Removes SWUA's Liability for Land Rehabilitation Costs

According to SWUA's 1940 contract with the Department of the Interior, SWUA was responsible for managing the land in accordance with the Bureau's rules and regulations. The 1940 contract specified that the United States would be held harmless for any costs that might be incurred to rehabilitate the land resulting from SWUA's management practices. Although SWUA's management practices generally deteriorated the project land, Public Law 100-563 removed SWUA's financial liability regarding the condition of this land, and authorized $3 million for its rehabilitation by the Forest Service.

[3]In June 1988, SWUA, in a statement submitted to the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources, stated that the $15 million compensation was based on the 1988 appraisal.

[4]The $15 million appropriation for P.L. 101-101 for SWUA's surface rights and interests on the project land was calculated by adding $2.9 million (the 1986 compensation) plus $11.5 million (the appraised value of SWUA's remaining surface rights and interests). According to SWUA's attorney, the $14.4 million total was then rounded up to the nearest whole million.

Additional Non-Monetary Compensation to SWUA in Public Law 100-563

Title to 95 Acres

As part of the compensation provided in Public Law 100-563, SWUA received title to 95 acres of project land traversing U.S. Highway 40, a direct major route from Salt Lake City. Neither the Bureau nor SWUA appraised the value of the 95 acres.

About 80 of the 95 acres, which form one lot situated north of the highway, are the site of SWUA's site office and herder facilities, including several cabins and corrals. The Bureau relocated these facilities in 1986 as part of the enlargement of the Strawberry Reservoir. The remaining 15 acres, zoned for commercial development, are located south of the highway and adjoin the existing Forest Service visitors' center. The southern parcel is the future site of SWUA's motel and convenience store facility, which has already been approved by Wasatch County. Forest Service and Bureau officials initially told us that once the enlarged Strawberry Reservoir is completely filled, the SWUA 15-acre parcel would be adjacent to the shoreline. However, the Bureau's Regional Supervisor of Water and Land later clarified this statement by saying that the SWUA land would be about one-half mile away from the reservoir.

First Right of Refusal

Public Law 100-563 entitles SWUA to retain the first right of refusal to grazing privileges on 30,785 acres of project land, and if permitted under a grazing rehabilitation plan to be established by the Forest Service, on the remaining 25,990 acres. The Uintah Forest Supervisor told us that grazing will be permitted only if it enhances other values and is consistent with the land use plan. If the Forest Service reopens the project land to grazing after the land has been rehabilitated, SWUA will be able to resume grazing by exercising its first right of refusal. Conceivably, therefore, all Forest Service grazing leases on this land could be assigned to SWUA.

Subsurface Rights

SWUA retained its contractual rights to issue oil, gas, coal, and mineral leases, excluding sand and gravel, on project land. Neither the SWUA appraisal nor the Bureau has determined the value of the subsurface rights. SWUA has entered into mineral leases in the past, but Bureau Utah Projects Office officials advised us that no subsurface leases currently exist. SWUA would receive revenues if future contracts for mineral rights were issued.

The Deteriorated Condition of the Strawberry Valley Project Land

SWUA's management of the Strawberry Valley Project land to enhance grazing resulted in the overall deterioration of this land. The Bureau has oversight responsibility for the project, but did not conduct the land use inspections required by its rules and regulations. In order to repair the damage to the land, the Congress authorized $3 million in Public Law 100-563 for the Forest Service to rehabilitate this land.

SWUA Allowed Land to Deteriorate

According to the chiefs of the Bureau's Land Management Recreation Branch and the Forest Service's Life and Watershed Management Branch, the Strawberry Valley Project land will require extensive rehabilitation. The condition of the land's riparian and aquatic resources was documented in a July 1984 Forest Service report entitled Aquatic Habitat Management/Rehabilitation on Strawberry Reservoir Tributary Streams by a fisheries biologist for the Uintah National Forest, and in the Bureau's Utah Projects Office August 1986 draft of the Strawberry Valley Project Land Management Plan. The 1986 draft report noted that, historically, SWUA practiced season-long (June through October) grazing of Strawberry Valley pastures, which resulted in the deterioration of the riparian habitat and fishery resource.

According to the 1986 draft report, the combination of overgrazing and herbicide treatments had a detrimental impact on riparian areas—the thin strips of vegetation bordering the reservoir and streams—that are important habitat for wildlife. Further, eroding stream banks contributed significantly to the silt load of streams, reducing the water quality, and the increased nutrient loading of the reservoir added to the general degradation of the fishery resource.

The 1984 Forest Service report provided an action plan to rehabilitate project streams at a 10-year cost of over $1 million. The plan included the reintroduction of riparian vegetation and bank stabilization. The Forest Service subsequently prepared a preliminary 5-year, $2.8-million estimate that was used to support the $3 million authorization in Public Law 100-563. This estimate included $2.2 million for stream channel and riparian rehabilitation, and $0.6 million for a range development plan. The Forest Service's Chief of the Life and Watershed Management Branch told us that a detailed rehabilitation plan with related costs will be developed once funds are appropriated. As of February 1990, $600,000 has been appropriated for land rehabilitation.

Bureau Did Not Conduct Land Use Inspections

According to the comments in the September 14, 1989, Congressional Record, the project and surrounding land historically were managed by SWUA under the Bureau's supervision, and at no time did the Bureau advise SWUA that the land was being mismanaged. The Bureau's Utah Projects Manager told us that SWUA managed the land to enhance grazing at the expense of riparian habitat and fishery resources. Although the Bureau requires land use inspections, the Bureau's Salt Lake City Regional Supervisor of Water and Land and the Lands Management and Recreation Branch Chief told us that the Bureau is not a land management agency, and that a hands-off policy was adopted regarding SWUA's land management practices. The Bureau's Utah Projects Office performed annual operation and maintenance inspections of the project facilities, but these inspections did not include an assessment of land use management, nor the condition of the land.

The Bureau is responsible for about 8.6 million acres in its network of over 300 dams and dikes, 250 reservoirs and hundreds of miles of canals, pipelines and tunnels. According to an official in the Bureau's Resources Management Washington, D.C., Liaison Division, the Bureau issued a policy in 1989 to require resource management plans for Bureau projects. To be developed by both the organizations managing the projects and the Bureau, the plans will provide guidance on how the organizations should manage the specific purposes of the project, such as grazing and recreation, in accordance with Bureau rules and regulations. The Bureau is drafting guidelines on what these plans should address as it develops resource management plans.

The Bureau allocated about $500,000 in fiscal year 1989, and has set aside about $3 million in fiscal year 1990 for plan development; however, no resource management plans have been completed as of February 1990.

Objectives, Scope and Methodology

In response to your July 10, 1989, letter and subsequent discussions with your office, we reviewed the legal character and economic value of the rights and interests to be acquired or transferred under section 4 of Public Law 100-563, including all properties and improvements, as well as the costs associated with rehabilitation of the Strawberry Valley Project land.

To determine the legal character of SWUA's rights and interests, we reviewed the legislative history of the Strawberry Valley Project and a 1979 Court of Claims decision. We also reviewed pertinent Department of the Interior legal opinions, and analyzed the contractual obligations between the Department of the Interior, the Bureau, and SWUA. We met with attorneys at the Department of the Interior in Washington, D.C., and the Bureau at the Salt Lake City Regional Office. We also met with SWUA's legal representative.

To determine the economic value of SWUA's rights and interests, we reviewed records, documentation and reports at the Bureau's Salt Lake City Regional Office, and Utah Projects Office in Provo, Utah. We also analyzed the documentation used by the Bureau to calculate the compensation provided to SWUA. We met with officials from the Bureau's Salt Lake City Regional and Utah Projects offices, the Forest Service's Uintah National Forest, SWUA, and the appraiser of the Strawberry Valley Project land.

To address the condition of the project land and the costs associated with its rehabilitation, we reviewed Bureau and Forest Service reports regarding the condition of the project land, and the Forest Service's preliminary estimate on the costs involved to rehabilitate the land. We also visited the project with representatives from the Bureau and the Forest Service. We also discussed Bureau resource management plans and the Bureau's inspections of project land with a Bureau headquarters official.

To address the comments appearing in the September 14, 1989, Congressional Record, we met with Bureau officials in the Salt Lake City Regional Office, and with SWUA representatives.

Our work was conducted from August 1989 to February 1990, in accordance with generally accepted government auditing standards.

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